

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

JANUARY TERM, 1903.

No. 1263.

192

ROBERT L. PRESTON, APPELLANT.

vs.

ELIZA O. SIEBERT

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED DECEMBER 11, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1903.

No. 1263.

ROBERT L. PRESTON, APPELLANT,

vs.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

ROBERT L. PRESTON, Appellant, }
vs. } No. 1263.
 ELIZA O. SIEBERT. }

a Supreme Court of the District of Columbia.

ELIZA O. SIEBERT, Complainant, }
vs. } No. 23577. In Equity.
 ROBERT L. PRESTON, Defendant. }

UNITED STATES OF AMERICA, } ss:
District of Columbia,

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 Filed October 24, 1902. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

ELIZA O. SIEBERT, Complainant, }
vs. } Equity. No. 23577, Doc. 53.
 ROBERT L. PRESTON, Defendant. }

Bill of Complaint.

The complainant, Eliza O. Siebert, respectfully shows unto the court as follows:

1. That she is of lawful age, a citizen of the United States, a resident of the District of Columbia, and brings this suit in her own right in relation to her sole and separate estate.

2. That the defendant Robert L. Preston is of lawful age, a citizen of the United States, a resident of the District of Columbia, and is sued in his own right.

3. That on the 10th day of June, 1895, Lizzie Maynadier Phelps and Sally M. P. Brown, being the owners in fee-simple of original lot numbered fourteen (14) in square numbered one hundred and fifty-eight (158) in the city of Washington District of Columbia, conveyed the same and also a part of original lot numbered fifteen

(15) in said square one hundred and fifty-eight (158) contained within the following metes and bounds: Beginning for the same at the southeast point of original lot fifteen (15) in square one hundred and fifty-eight (158), (being the point where the south line of said lot fifteen (15) joins or intersects the private alley of the northwest corner of the stable owned by Dulany and

Whiting); thence west along the south line of said lot fifteen (15) for the distance of ten (10) feet; thence north at right angle- to said south line of said lot fifteen (15) to the private alley; thence southeast along the line of the alley to the beginning; said lines forming a triangle containing twenty-two square feet of ground more or less, together with the perpetual right of way for the ordinary uses of an alley for said original lot fourteen (14) in square one hundred and fifty-eight (158) over the following piece or parts of land and premises beginning for the same at the northeast corner of a certain alley leading from Eighteenth street, N. W., easterly into square one hundred and fifty-eight (158) dedicated by Guy F. Whiting and H. Rozier Dulany, trustees, on August 10, 1888, as per plat recorded in Book 16, page 27, of the surveyor's office of the District of Columbia; thence in a southeasterly direction on a continuation of the northerly line of said alley for a distance of twenty-six and eighty-one-hundredths (26.81) feet; thence southwesterly and at right angles from continuation of said northerly line of said alley for a distance of nine and sixty-seven-hundredths (9.67) feet; thence northwesterly to the southeast corner of said alley; thence northeasterly for a distance of ten (10) feet, to the place of beginning; said piece of land being approximately contained between the northerly and southerly lines of said alley extended southeasterly for a distance of twenty-six and eighty-one-hundredths (26.81) feet, to Calderon Carlisle and Randall Hagner as trustees by a certain deed in trust duly recorded among the land records of the District of Columbia in Liber No. 2028, folio 113 *et seq.*, in and upon certain trusts set forth in a certain deed in trust and among others in trust to sell the said real estate by said deed in trust conveyed. All of which will more fully and at large appear by reference to said deed in trust, a copy of which is herewith filed, marked "Exhibit 1," and which it is prayed will be read by the court and taken as a part of this paragraph.

4. That said Calderon Carlisle and Randall Hagner as trustees in execution of the trust reposed in them by said deed in trust, for a valuable consideration, sold and conveyed in fee-simple to your complainant by deed dated the 17th day of February, A. D. 1896, the south thirty-five (35) feet front on Eighteenth street west, by full depth with even width of original lot numbered fourteen (14) in square numbered one hundred and fifty-eight (158) together *with a free and uninterrupted right of way forever* for purposes of ingress, egress and regress over the rear ten (10) feet by the full width of the north twenty-eight (28) feet front of the said original lot numbered fourteen (14), and also over that part of original lot numbered fifteen (15) in said square, described as follows: Beginning at the

southeast corner of said lot fifteen (15) and running thence northeasterly with the easterly line of said lot, nine and sixty-seven-hundredths (9.67) feet; thence northwesterly to the northeast corner of the ten (10) feet wide alley laid out in said lot by R. H. Dulaney, attorney, as per plat recorded in the office of the surveyor for the District of Columbia in Liber No. 16 folio 27; thence southerly with the easterly line of said alley ten (10) feet; thence southeasterly in a straight line to aforesaid southeast corner of said lot fifteen (15); thence west with the south line of said lot, ten (10) feet; thence north to intersect the fourth line aforesaid. All of which

4 will more fully and at large appear by reference to said deed recorded among the land records of the District of Columbia in Liber 2102, folio 79 *et seq.*, a copy of which is herewith filed, marked "Exhibit 2," and which it is prayed will be read by the court and taken as a part of this paragraph. The original deed to be produced when called for.

Since which time your complainant has owned and still owns in fee-simple the property conveyed to her by said Calderon Carlisle and Randall Hagner, trustees.

5. That the free and uninterrupted right of way forever granted unto your complainant by the said Calderon Carlisle and Randall Hagner, trustees, for the purposes of ingress, egress and regress over the rear ten (10) feet by full width of the north twenty-eight (28) feet front of said original lot fourteen (14) and over that part of original lot fifteen (15) above described by metes and bounds, was for the purpose of giving and granting unto to your complainant the right and means of getting into and from the rear of her property, from and into the private alley, and thence into the public alley as shown on map or plat filed herewith as "Exhibit 3" and which it is prayed may be considered herewith as a part of this paragraph. The right of way so granted over the rear ten (10) feet by full width of the north twenty-eight (28) feet of original lot fourteen (14), was intended for use for the ordinary purposes of a private alley, open, free uninterrupted and free from obstructions, and to be a continuation of the private alley shown on said map; and was so purchased by your complainant so as to enable her to have admission of fuel, groceries and other supplies, and for the removal of garbage, and ashes, and for other uses and purposes, into and from her property.

5 6. That shortly after the purchase by the complainant of the south thirty-five (35) feet front on Eighteenth street west by full depth of original lot fourteen (14) in square one hundred and fifty-eight (158), she erected a dwelling thereon (being premises No. 1325 18th street, N. W.) where she now and has since resided. And during said time and for about a period of five years, she has had the free and uninterrupted right of way over the said rear ten (10) feet by full width of the north twenty-eight feet front of said original lot fourteen (14), open and unobstructed by gates, fences or otherwise, for purposes of ingress, egress and regress, and for the ordinary purposes of an alley, for the admission of fuel and

other supplies, and for the removal of garbage and ashes from the premises, and for other purposes. And during all of which time until within the last several weeks the said right of way over the rear ten (10) feet by full width of the north twenty-eight (28) feet front of original lot fourteen (14) was free, open, uninterrupted and not obstructed by gates or fences or other obstacles. And that the right of way over that part of original lot fifteen (15) above described by metes and bounds has remained and still remains a free, open, uninterrupted and unobstructed right of way.

7. That by deed dated the 23rd day of February 1901, and duly recorded among the land records of the District of Columbia, in Liber 2548, folio 400 *et seq.*, Sally M. P. Brown, conveyed by deed in fee-simple to the defendant Robert L. Preston the north twenty-eight feet front on Eighteenth street west by full depth of original lot numbered fourteen (14) in square one hundred and fifty-eight (158), but subject however to right of way over the rear ten (10) feet by full width. A copy of which is herewith filed marked
6 Exhibit "4" and prayed to be taken as part hereof.

8. That at the time of the purchase of the north twenty-eight (28) feet of said original lot fourteen (14) in square one hundred and fifty-eight (158) by the defendant, the right of way, which is owned by your complainant, over said rear ten (10) feet by full width of the north twenty-eight (28) feet front of original lot fourteen (14), was free, open, uninterrupted and unobstructed by fences, gates or other obstacles and so remained until within the past several weeks, when the defendant in violation of your complainant's rights to have a free, uninterrupted, open and unobstructed right of way over said rear ten (10) feet has erected two gates on the north line of said original lot fourteen (14) and across the north entrance of your complainant's right of way over the rear ten (10) feet by full width of the north twenty-eight (28) feet front of said original lot fourteen (14). That said gates are solid and are about six feet high; that one gate is about seven feet wide and the other about three feet wide. The larger gate is hung on one end by hinges attached to a post driven in the ground and in the right of way, and the other end is fastened on the inside by a large iron bolt which extends into a post driven into the ground; and the smaller gate is fastened by means of hinges on one end, and on the other end by a bolt pushed into a staple attached to the larger gate. That the larger gate is closed nearly all the time, both day of night, and the smaller gate is closed and fastened at night and sometimes in the day, making access into the right of way owned by your complainant over the private alley shown on said map, impossible until the said gates are opened from the inside.

7 And he has also extended his back yard to the rear line of the said north 28 feet front of original lot 14, and sodded over the whole of the rear ten feet of same.

That in order that your complainant may have her supplies and fuel brought into the rear of her premises, and ashes, garbage, etc., carried therefrom, it is necessary for one to come to her front door

and give notice in order that the gates may be opened from the inside so that admission can be obtained.

And although complainant has protested against the erection of the gates as aforesaid yet the defendant in utter disregard of her rights and against equity and good conscience continues to maintain the obstructions in her free and uninterrupted right of way over said rear ten feet of the north twenty-eight (28) feet of said original lot fourteen (14) in square one hundred and fifty-eight (158), and refuses to take down said gates and remove said obstructions.

9. That the erection and maintaining said gates by the defendant across the right of way purchased by and granted unto your complainant over the rear ten (10) feet by full width of the north twenty-eight (28) feet of original lot fourteen (14) in square one hundred and fifty-eight (158) deprives complainant of a free and uninterrupted right of way, open and unobstructed, over said property, and is subjecting her to annoyance, trouble, inconvenience and injury, and she is liable to suffer irreparable injury thereby and in consequence thereof.

The premises considered, and inasmuch as complainant is without adequate relief except in this honorable court where such matters are cognizable and relievable, she therefore prays as follows:

8 1. That Robert L. Preston may be served with process and made a party defendant hereto and required to answer the exigencies of this bill.

2. That this honorable court will by its decree forever enjoin the said Robert L. Preston from maintaining gates, fences or other obstructions of like nature, across the rear ten (10) feet by full width of the north twenty-eight (28) feet front of original lot fourteen (14) in square one hundred and fifty-eight (158) or any part thereof, and from in any manner interfering with the complainant in the free, open and uninterrupted use of her right of way over said rear ten feet by full width of the north twenty-eight (28) feet front of original lot fourteen (14) in square one hundred and fifty-eight (158), or any part thereof.

3. And for such other and further relief as the nature and exigencies of this case may require.

The defendant to this bill of complaint is Robert L. Preston.

ELIZA O. SIEBERT.

BERRY & MINOR, *Solicitors*.

DISTRICT OF COLUMBIA, *To wit*:

Eliza O. Siebert being first duly sworn according to law deposes and upon oath says that she has read the foregoing petition by her subscribed, and knows the contents thereof, and that the facts therein stated upon her personal knowledge are true, and those stated upon information and belief she believes to be true.

ELIZA O. SIEBERT.

Subscribed and sworn to before me this seventeenth day of October, A. D. 1902.

[SEAL.]

HARRY L. RUST,
Notary Public.

"EXHIBIT 1."

Filed October 24, 1902. J. R. Young, Clerk.

This indenture, made this tenth day of June, in the year of our Lord one thousand eight hundred and ninety-five, by and between Lizzie Maynadier Phelps, widow of Seth Ledyard Phelps, and Sally M. P. Brown, of Washington, District of Columbia, parties of the first part, and Calderon Carlisle and Randall Hagner, of the same place, parties of the second part:

Witnesseth, that the said parties of the first part for and in consideration of ten dollars (\$10), lawful money of the United States of America, to them in hand paid by the parties of the second part, the receipt of which before the sealing and delivery of these presents is hereby acknowledged, hath given, granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed, and do by these presents give, grant, bargain and sell, alien, enfeoff, release, convey and confirm, unto the parties of the second part, trustees as aforesaid, the survivor of them, his heirs and assigns forever, the following-described land and premises, situate, lying and being in the city of Washington, District of Columbia, known and distinguished as and being the north twenty-one (21) feet front on Eighteenth street N. W., by the depth of original lot fourteen (14) in square numbered one hundred and fifty-eight (158); also a part of original lot numbered fifteen (15) in said square one hundred and fifty-eight (158) contained within the following metes and bounds; beginning for the same at the southeast point of original lot fifteen (15) in square one hundred and fifty-eight (158) (being the point where the south line of

10 said lot fifteen joins or intersects the private alley of the northwest corner of the stable owned by Dulany and Whiting); thence west along the south line of said lot fifteen (15) for the distance of ten (10) feet; thence north at right angle to said south line of said lot fifteen (15) to the private alley; thence southeast along the line of the alley to the beginning; said lines forming a triangle containing twenty-two square feet of ground, more or less, as described in deed in fee from Nannie Yulee Noble and W. B. Noble, her husband, to Lizzie Maynadier Phelps, recorded April 27th, A. D. 1891, in Liber 1578 at folio 312, *et seq.*, one of the land records for the District of Columbia, together with the perpetual right of way for the ordinary uses of an alley for the north twenty-one (21) feet front by the depth of original lot fourteen (14) in square one hundred and fifty-eight (158) Washington, D. C., over the following piece or parts of land and premises beginning for the same at the northeast corner of a certain alley leading from Eighteenth

street, N. W., easterly into square one hundred and fifty-eight (158) dedicated by Guy F. Whiting and H. Rozier Dulany, trustees, on August 10, 1888, as per plat recorded in Book 16, page 27, of the surveyor's office of the District of Columbia; thence in a southeasterly direction on a continuation of the northerly line of said alley for a distance of twenty-six and eighty-one-hundredths (26.81) feet; thence southwesterly and at right angles from continuation of said northerly line of said alley for a distance of nine and sixty-seven-hundredths (9.67) feet; thence northwesterly to the southeast corner of said alley; thence northeasterly for a distance of ten (10) feet, to the place of beginning; said piece of land being approximately contained between the northerly and southerly lines of said alley extended southeasterly for a distance of twenty-six and eighty-one-hundredths (26.81) feet; as described in deed recorded April 27, A. D. 1891, in Liber 1578 at folio 314 *et seq.*, one of the land records for the District of Columbia; also the south forty-two feet by the depth of original lot fourteen (14) in square one hundred and fifty-eight (158) being the south forty-two feet front on Eighteenth street of said lot fourteen (14) by depth of one hundred and twenty (120) feet more or less, as described in deed in fee from Nannie Yulee Noble and W. B. Noble, her husband, to Sally M. P. Brown, recorded April 27, A. D. 1891, in Liber 1578 at folio 308 *et seq.* one of the land records for the District of Columbia; together with the perpetual right of way for the ordinary uses of an alley for the south forty-two feet front by the depth of original lot numbered fourteen (14) in square one hundred and fifty-eight (158), Washington, D. C., over the following-described piece or parcel of land and premises; beginning for the same at the northeast corner of a certain alley leading from Eighteenth street, N. W., easterly into square one hundred and fifty-eight (158), dedicated by Guy F. Whiting and H. Rozier Dulany, trustees, on August 10, 1888, as per plat recorded in Book 16, page 27, of the surveyor's office of the District of Columbia; thence in a southeasterly direction on a continuation of the northerly line of said alley for a distance of twenty-six and eighty-one-hundredths (26.81) feet; thence southwesterly and at right angles from continuation of said northerly line of said alley for a distance of nine and sixty-seven-hundredths (9.67) feet; thence westerly to the southeast corner of said alley; thence northeasterly for a distance of ten (10) feet to the beginning; said piece of land being approximately contained between the northerly and southerly lines of said alley extended southeasterly for a distance of twenty-six and eighty-one-hundredths (26.81) feet, as described in deed from Guy F. Whiting and H. Rozier Dulany, trustees to Sally M. P. Brown, recorded April 27th, A. D. 1891, in Liber 1578 at folio 310 *et seq.* one of the land records for the District of Columbia. Together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining and all the estate, right, title, interest and claim either at law or in equity or otherwise however of the parties of the first part, of, in, to, or out of the said land and premises.

To have and to hold the said land and premises and appurtenances unto and to the only use of the parties of the second part, the survivor of them, his heirs and assigns forever, and upon the trusts hereinafter mentioned and declared; that is to say, in trust to sell the said described land and premises, at public or private sale as parties of the second part, or the survivor of them or his heirs shall deem best, upon such terms and conditions as the parties of the second part, the survivor of them or his heirs shall deem advisable, and without any obligation on the part of the purchaser or purchasers to see to the application of the purchase-money; and out of the proceeds of said sale or sales, first, to pay all proper costs, charges and expenses in and about said sale or sales, including a commission of five per centum to the trustees aforesaid, upon the gross amount of said sale or sales; and all existing taxes due at

13 the time of said sale or sales; second, to pay the incumbrance of seven thousand five hundred dollars (\$7,500) with

interest then due, now secured by deed of trust on part of land hereinbefore described, said deed of trust being recorded in Liber 1894 at folio 209 *et seq.* one of the land records for the District of Columbia; third, to pay out of said proceeds, after payment of above-mentioned cost charges, expenses, commissions, taxes and the debt of seven thousand five hundred dollars (\$7,500) with interest, to Lizzie Maynadier Phelps, her executors, administrators or assigns, the sum of ten thousand dollars (\$10,000) with interest thereon at the rate of six per centum per annum from July 1, 1890; fourth, the balance remaining, if any, of said proceeds of said sale or sales, to invest and hold upon the same uses and trusts as are set forth the last will and testament of Seth Ledyard Phelps, which is duly admitted to probate and recorded in Will Book 22, page 330, in the office of the register of wills of the District of Columbia, and the said Lizzie Maynadier Phelps, Sally M. P. Brown, their heirs and executors and administrators do hereby covenant and agree to and with the parties of the second part the survivor of them, his heirs and assigns, that they, the parties of the first part and their heirs, shall and will warrant and forever defend the said land and premises and appurtenances unto the parties of the second part, the survivor of them, his heirs and assigns, from and against the claims of all persons claiming or to claim the same or any part thereof, or interest therein, by from, under or through them or any of them, excepting always the claims under the deed of trust hereinbefore mentioned. And further that the parties of the first part and their

14 heirs shall and will at any and all times hereafter upon the request and at the cost of the parties of the second part the survivor of them, his heirs and assigns make and execute all such other deed or deeds or other assurance in law, for the more certain and effectual conveyance of the said land and premises and appurtenances unto the parties of the second part, the survivor of them, his heirs or assigns, as the parties of the second part, the survivor of them, his heirs or assigns, or their counsel, learned in the law shall advise, devise or require.

In testimony whereof, the parties of the first part, have hereunto set their hands and seals on the day and year first hereinbefore written.

LIZZIE MAYNADIER PHELPS. [SEAL.]
SALLY M. P. BROWN. [SEAL.]

Signed, sealed and delivered in the presence of
OSCAR LUCKETT.

DISTRICT OF COLUMBIA, *To wit*:

I, Osear Lockett a notary public in and for the said District of Columbia, do hereby certify that Lizzie Maynadier Phelps and Sally M. P. Brown, parties to a certain deed bearing date on the 10th day of June A. D. 1895, and hereunto annexed, personally appeared before me in the said District of Columbia, the said Lizzie Maynadier Phelps and Sally M. P. Brown, both widows, being personally well known to me to be the persons who executed the said deed and acknowledged the same to be their act and deed.

Given under my hand and official seal this 10th day of June, 1895.

[SEAL.]

OSCAR LUCKETT,
Notary Public.

15

"EXHIBIT 2."

Filed October 24, 1902.

This indenture made this seventeenth day of February, A. D. 1896, by and between Calderon Carlisle and Randall Hagner, of the city of Washington, District of Columbia, trustees under a certain deed in trust from Lizzie Maynadier Phelps and Sally M. P. Brown, bearing date on the 10th day of June, A. D. 1895, and duly recorded in Liber No. 2028 folio 113, *et seq.*, one of the land records of the District of Columbia, acting in pursuance of the powers therein conferred, parties of the first part, and Eliza O. Seibert, wife of Louis Philipp Siebert, of the same place, party of the second part;

Witnesseth, that the said parties of the first part, for and in consideration of three thousand dollars, lawful money of the United States of America, to them in hand paid by the party of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, have given, granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed, and do by these presents give, grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the party of the second part, her heirs and assigns forever, the following-described land and premises, situate, lying and being in the city of Washington, District of Columbia, and distinguished as and being the south thirty-five (35) feet front on 18th street west, by the full depth with even width of original lot numbered fourteen (14) in square numbered one hundred

and fifty-eight (158) together with the free and uninterrupted right of way forever, for the purposes of ingress, egress and regress, over the rear ten (10) feet by the full width of the north twenty-eight (28) feet front of said original lot numbered fourteen (14), and also over that part of original lot numbered fifteen (15) in said square, described as follows: Beginning at the southeast corner of said lot fifteen (15) and running thence northeasterly with the easterly line of said lot, nine and sixty-seven-hundredths (9.67) feet; thence northwesterly to the northeast corner of the ten (10) feet wide alley laid out in said lot by R. H. Dulaney, attorney, as per plat recorded in the office of the surveyor for the District of Columbia in Liber No. 16, folio 27; thence southerly with the easterly line of said alley ten (10) feet; thence southeasterly in a straight line to aforesaid southeast corner of said lot fifteen (15); thence west with the south line of said lot, ten (10) feet; thence north to intersect the 4th line aforesaid; subject, however, to a certain deed of trust from Sally M. P. Brown, *et vir*. Sevalion A., to Mahlon Ashford and Aldis B. Brown, date March 8th, 1894, securing seventy-five hundred (\$7,500.) dollars and interest, to the American Security & Trust Company, which the party hereto of the second part assumes; as an incumbrance upon the south thirty-five (35) feet front by depth of said lot fourteen (14) hereby conveyed, and agrees to pay and satisfy as a part of the consideration for these presents; together with the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the right, title, interest and estate, legal, equitable and otherwise, of the said parties of the first part, trustees as aforesaid, in and to the same.

To have and to hold the said land and premises and appurtenances, unto and to the sole use of the party of the second part, her heirs and assigns forever.

In testimony whereof, the parties of the first part, as trustees as aforesaid, have hereunto set their hands and seals on the day and year first above written.

CALDERON CARLISLE, *Trustee*. [SEAL.]
 RANDALL HAGNER, *Trustee*. [SEAL.]

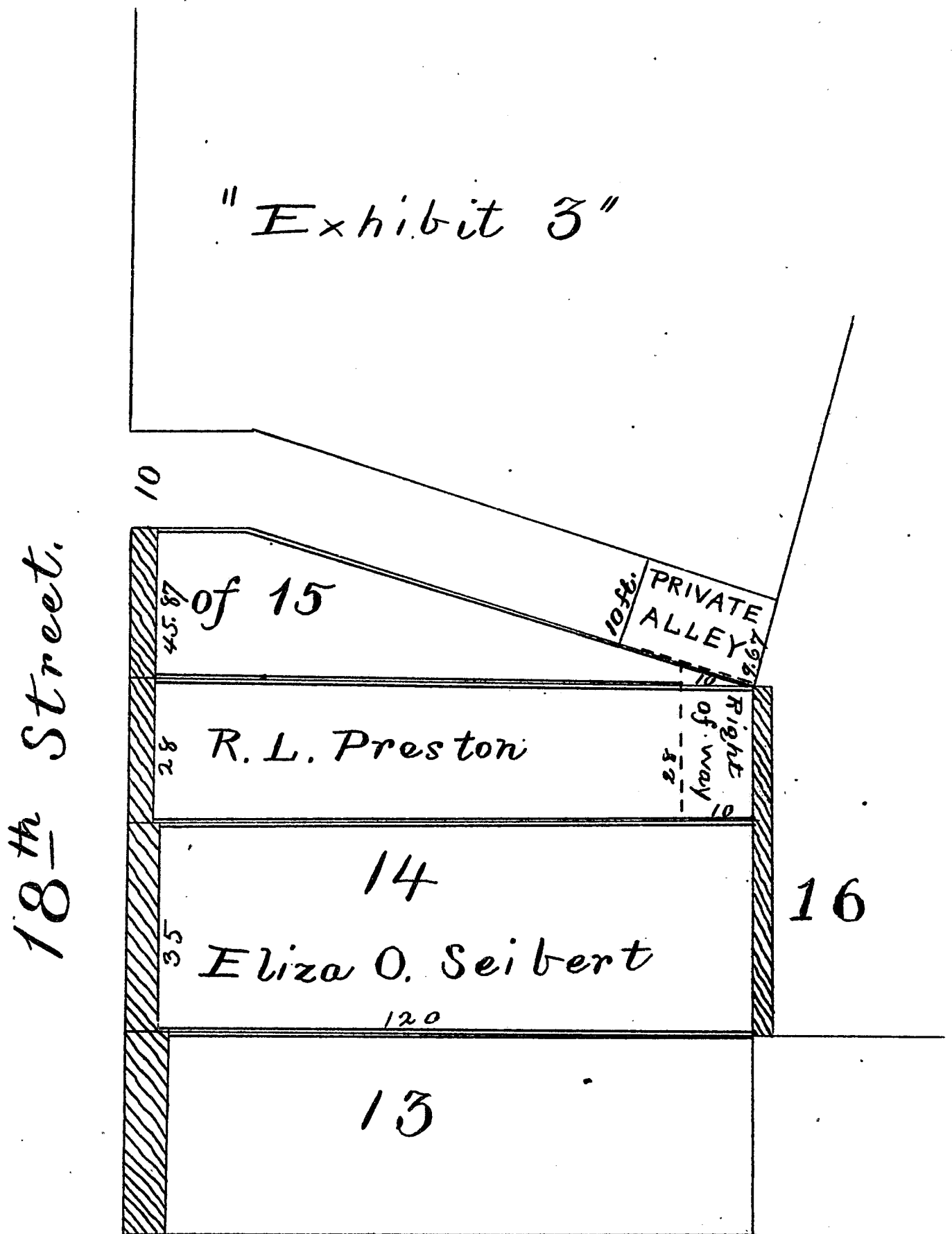
Signed, sealed & delivered in the presence of—

OSCAR LUCKETT.
 RICHMOND STONE.

DISTRICT OF COLUMBIA, *To wit*:

I, Oscar Lockett, a notary public in and for the said District, do hereby certify that Calderon Carlisle and Randall Hagner, trustees, parties to a certain deed bearing date on the seventeenth day of February, A. D., 1896, and hereto annexed, personally appeared before me in said District, the said Calderon Carlisle and Randall Hagner, trustees, being personally well known to me as the persons

"Exhibit 3"



Square 158.

— Walls.
 Buildings.

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 vs.
 Eliza O. Seibert } p. 18.

who executed the said deed, and acknowledged the same to be their act and deed.

Given under my hand and official seal this seventeenth day of February, A. D. 1896.

[NOTARY'S SEAL.]

OSCAR LUCKETT,
Notary Public.

(Here follows diagram marked p. 18.)

19

"EXHIBIT 4."

Filed October 24, 1902.

This deed made this 23rd day of February, A. D. 1901, witnesseth, that Sally M. P. Brown (widow) of the District of Columbia, party hereto of the first part for and in consideration of ten dollars (\$10.) in current money of the United States to her in hand paid by Robert L. Preston of said District of Columbia, party hereto of the second part, receipt of which at the delivery hereof, is hereby acknowledged, hath bargained and sold, granted, enfeoffed and conveyed, and doth hereby bargain and sell, grant, enfeoff and convey unto and to the use of the said Robert L. Preston, his heirs and assigns, the following-described land and premises, with the easements, and appurtenances thereunto belonging, situate and lying in the city of Washington, in said District of Columbia, namely, the north twenty-eight (28) feet front on Eighteenth street west by full depth of original lot numbered fourteen (14) in square numbered one hundred and fifty-eight (158) subject to right of way over the rear ten (10) feet by full width.

To have and to hold the said land and premises with the easements and appurtenances unto and to the use of the said Robert L. Preston, his heirs and assigns forever. And the said Sally M. P. Brown for herself and her heirs doth hereby covenant with the said party hereto of the second part his heirs and assigns, to forever warrant and defend the title to said granted premises unto the said party hereto of the second part, his heirs and assigns, from and against all persons claiming the same or any part thereof, by, through

20 or under the said party hereto of the first part and at the cost of the person requesting the same, to execute and deliver any other or further deed or deeds deemed by the legal counsel necessary to more fully assure the title to the said granted premises unto the said party hereto of the second part, his heirs and assigns.

In testimony whereof, the said Sally M. P. Brown, hath herewith set her hand and seal the day and year first hereinbefore written.

SALLY M. P. BROWN. [SEAL.]

Signed, sealed and delivered in the presence of
HORACE H. WESTCOTT.

DISTRICT OF COLUMBIA, *To wit:*

I, Horace H. Westcott, a notary public in and for the District aforesaid do hereby certify that Sally M. P. Brown (widow) the grantor in and who is personally well known to me as the person who executed the foregoing and annexed deed, dated February 23, A. D. 1901, personally appeared before me in the District aforesaid and acknowledged said deed to be her act and deed.

Given under my hand and notarial seal this 23rd, day of February, A. D. 1901.

[NOTARIAL SEAL.]

HORACE H. WESTCOTT,
Notary Public, D. C.

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Affidavit of Louis P. Siebert.

Filed October 24, 1902.

In the Supreme Court of the District of Columbia.

ELIZA O. SIEBERT, Complainant,	} Equity. No. 23577.
vs.	
ROBERT L. PRESTON, Defendant.	

Louis P. Siebert, being first duly sworn according to law, deposes and upon oath says that in February, 1896, he represented, as agent, his wife, Eliza O. Siebert, in the purchase of the south thirty-five feet front by a full depth with even width of original lot fourteen in square numbered one hundred and fifty-eight; that the property was purchased through Mr. A. J. Miller, as the agent and representative of the grantors, Calderon Carlisle and Randall Hagner, trustees; that before the transfer was made from said Calderon Carlisle and Randall Hagner as grantors, this affiant had the title to said property examined and ascertained that the grantee would be without means of access into the private alley and thence into the public alley except by express grant of right of way over the rear ten feet of the north twenty-eight feet front by full depth of said original lot fourteen in square one hundred and fifty-eight, and also over that portion of original lot fifteen, forming a triangle on the rear of original lot fifteen adjoining the said private alley; and that he, as the representative and agent of his wife, bought and there was conveyed to her in the deed of conveyance of said trustees

22 to the grantee, a free and uninterrupted right of way forever over said rear ten feet of the north twenty-eight feet front of original lot fourteen, and over that part of original lot fifteen above described, for purposes of ingress, egress and regress. That it was his intention to purchase an open, free, uninterrupted and unobstructed right of way, free from obstructions of any and all kinds, and that said right of way should be a continuation of the private alley above referred to, and that he so informed the agent and representative of the grantors; that at the time of the

consummation of the sale to the said Eliza O. Siebert and the delivery of the deed to her, in response to an inquiry from this affiant, the said agent and representative of the grantors informed this affiant and assured him that said deed conveyed to his wife, the grantee therein, a perpetual right of way forever, open and uninterrupted, for alley purposes from the private alley to the rear of the grantee's property.

That after the purchase of said property by affiant's wife, she erected a dwelling-house thereon and for about the last five years has had a free, open and unobstructed right of way over the rear ten feet of the north twenty-eight feet front of original lot fourteen in square one hundred and fifty-eight, and also over that part of original lot fifteen above referred to, into the private alley and thence into the public alley, for the purposes of admission of fuel, supplies, and for other purposes, and for the removal of garbage and ashes into and from her back yard; that during the last several weeks Robert L. Preston, the owner of the north twenty-eight feet front of original lot fourteen has erected two gates on the north line of the said north twenty-eight feet front of original lot fourteen in square one hundred and fifty-eight, and across the right of way granted unto affiant's wife; and has also extended his back yard to the rear line of said lot fourteen and over the whole of the rear ten feet, over which was granted affiant's wife a free and uninterrupted right of way.

LOUIS P. SIEBERT.

Subscribed and sworn to before me this seventeenth day of October, A. D. 1902.

[SEAL.]

H. L. RUST,
Notary Public, D. C.

Affidavit of Andrew J. Miller.

Filed October 24, 1902.

In the Supreme Court of the District of Columbia.

ELIZA O. SIEBERT, Complainant,	} Equity. No. 23577.
vs.	
ROBERT L. PRESTON, Defendant.	

Andrew J. Miller, being first duly sworn according to law, deposes and upon oath says, that in February, 1896, he represented, as real-estate broker, Calderon Carlisle and Randall Hagner, trustees, in the sale to Eliza O. Siebert of the south thirty-five (35) feet front on Eighteenth street west, by full depth with even width of original lot numbered fourteen (14) in square numbered one hundred and fifty-eight (158), together with the right of way forever over the rear ten feet by full width of the north twenty-eight (28) feet front of said original lot numbered fourteen (14), and over the rear part of

original lot numbered fifteen (15) as described in the deed of conveyance from the said Carlisle and Hagner, trustees, to the said Eliza O. Siebert; and to the best of affiant's knowledge, information and belief the said right of way granted unto said Eliza O. Siebert was for the purpose of giving and granting unto her means of ingress and egress to her property from and to the alley running from Eighteenth street into said square and lying north of lot fourteen, for the ordinary purposes of an alley, and that it was the intention of the grantors that she should have a perpetual right of way over said lots fourteen (14) and fifteen (15), free, open, uninterrupted and unobstructed; that said right of way was intended to be for the use and convenience of said grantee; that the granting of said right of way and the incorporating of the same into the deed of conveyance, was in pursuance of a discussion on this subject between this affiant and Col. Louis P. Siebert, acting as agent for Eliza O. Siebert, and between this affiant and Randall Hagner, one of the grantors in said deed of conveyance.

ANDREW J. MILLER.

CITY OF NEW YORK, }
State of New York, } *To wit:*

Personally appeared before me in my city and State aforesaid, Andrew J. Miller, and made oath in due form of law that the foregoing affidavit by him subscribed is true to the best of his knowledge, information and belief.

25 Given under my hand and official seal this twenty-second (22nd) day of October, A. D. 1902.

[SEAL.]

A. W. CHAMBERLAIN,
Notary Public, New York County, New York.

No. 36.

Rule to Show Cause.

Filed October 24, 1902.

In the Supreme Court of the District of Columbia.

ELIZA O. SIEBERT }
vs. } Equity. No. 23577.
ROBERT L. PRESTON. }

On consideration of the bill of complaint, and accompanying affidavits, filed by Eliza O. Siebert in the above-entitled cause, it is this 24th day of October, A. D. 1902, by the court ordered that the defendant, Robert L. Preston, show cause, if any he has, on or before the sixth day of November, A. D. 1902, why the prayers of the bill shall not be granted, provided a copy of this order be served on the defendant on or before the 31st day of October, 1902.

By the court—

A. B. HAGNER,
Asso. Justice.

26

Marshal's Return.

Served copy of the within writ on Robert L. Preston personally.
Oct. 24, 1902.

AULICK PALMER, *Marshal.*

Answer of Robert L. Preston.

Filed October 27, 1902.

In the Supreme Court of the District of Columbia.

ELIZA O. SEIBERT	} Equity. No. 23577.
vs.	
ROBERT L. PRESTON.	

1 & 2. Defendant admits the allegations of paragraphs I and II of the bill.

3. Defendant admits that a deed to Carlisle and Hagner, trustees, was executed and recorded as set forth in 3rd paragraph of the bill, and presumes that the allegations are in strict conformity with the language of said conveyance.

4. Defendant admits that Carlisle and Hagner, trustees conveyed the premises to the complainant, as alleged in paragraph IV of the bill, and will require the original of said deed to be produced for inspection before the hearing.

27 Defendant admits that the complainant is the owner in fee-simple of said property.

5. Defendant admits that the purpose of granting to the complainant the right of way, provided for by said conveyance, was that the complainant as owner of said lot 14, or any future owner, may have the right and means of getting from said lot 14 from the rear of said lot into the private alley, and thence into the public alley, as shown upon the plat filed as Exhibit 3, and defendant says that the complainant has the free and uninterrupted right of way for the purpose of ingress, regress and egress over the rear ten feet of defendant's lot, by the full width of the north 28 feet front of said lot, and that he has not obstructed such free and uninterrupted right of way, nor does he intend so, to do.

6. Defendant admits that the complainant resides in the dwelling-house as alleged in the 6th paragraph.

Defendant further says that until about the month of September, 1901, this lot he now owns was vacant, and there was no occasion for a fence around same. On or about September 1st, 1901, having previously become the owner of said lot, he began to build a house adjoining the complainant's dwelling-house, which said house of his was finished and ready for occupancy about September 1st, 1902.

7. Defendant admits the allegations of the 7th paragraph.

8. In answer to the 8th paragraph, defendant admits that he has erected two gates on the north line of his lot, and across the north entrance of complainant's right of way over the rear of his
28 said lot, said gates being such as are usual and common in fences at the rear of lots in the city of Washington. These gates are of ordinary white-pine fencing, with such conveniences for fastening the same as are ordinarily adopted. The smaller gate has a latch which can be readily opened from the outside. The larger gate is closed entirely all the time, day and night. Defendant denies that the smaller gate is fastened at night, or in the daytime. It has been kept unfastened during this whole time pending a friendly adjustment, ascertaining the rights at law of the defendant in respect to the premises. Defendant says that it is not true that access into the right of way of the complainant is impossible until such gates are open from the inside. Defendant admits that he has sodded the whole of his back yard; and says that this makes the premises neater, and does not interfere in the slightest with the right of way of the complainant by the means of a reasonable and convenient pathway somewhere over and within the limits of said ten feet. The complainant and others of her household have continuously gone over the rear of defendant's lot without any obstruction whatever or interference, so far as defendant and his property are concerned. Defendant has tried to have a plan adopted which will enable him, the defendant, to close the gates at proper times, and yet afford means of acquainting the complainant of the wish or desire of any person having the right to come into the complainant's premises to communicate by means of a bell or gong, so that the gate can be opened by some one from the complainant's premises. This convenience the defendant has offered to provide at his own expense, and
29 the offer still continues open. Defendant wishes to offer to the complainant the same convenience of getting in and out of the gate that he has himself, and at the same time to afford the complainant the protection of his gate at this point, which in protecting the defendant's own lot, will also protect that of the complainant. Defendant says that a brick wall separates the complainant's premises from his own. In this wall is a gate or door, similar in construction to the smaller gate complained of, and about three feet wide.

To the complainant's allegation that she protested against the erection of gates, the defendant says that before proceeding to fence in his own property, he told the husband of said complainant of his purpose to put up the gates, and put on a lock and gave him a key. Acting as this defendant supposed as agent for the said wife, the complainant's husband then and there said that he was glad to have such gates put there, as it would be a protection against dogs and intruders generally. The next day the complainant's husband wrote this defendant a note, saying that he objected to the putting up of a gate with a lock on it. Defendant supposed it was the lock, and not the gate that was the subject of objection, and has not known of any protest against the erection of said gates. He admits

that since the gates have been erected objection has been made to their maintenance, by and through counsel for the complainant.

9. Defendant admits that the erection and maintenance of said gates deprives the complainant of an open way, but says that it does not deprive the complainant of a free and uninterrupted right of way. Defendant renews expression of his readiness to facilitate means of communication between said gates and complainant's house, so as to reduce to a minimum the alleged inconvenience that may result from the maintenance of said gates. Defendant expressly disclaims any intention whatever of inconveniencing or interrupting the complainant or any of the household of the complainant, or any future owner of the property in the full enjoyment of the rights conferred by the terms of the conveyance, relied upon by said complainant. Defendant says that he is using his own property in the usual and customary manner of owners of houses and lots in the city of Washington, and that there is no irreparable injury caused to the complainant.

Wherefore he prays that said bill be dismissed, with allowance to him of his reasonable costs.

ROBERT L. PRESTON.

DISTRICT OF COLUMBIA, ss :

Robert L. Preston, the above-named defendant, being sworn according to law, deposes and upon oath says that he has read the foregoing petition, and knows the contents thereof, and that the facts therein stated upon his personal knowledge are true, and those stated upon information and belief he believes to be true.

ROBERT L. PRESTON.

Sworn and subscribed to before me this twenty-fifth day of October, A. D. 1902.

[SEAL.]

EDMOND L. McCLELLAND,
Notary Public, D. C.

FRANK W. HACKETT,
For Def't Preston.

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Decree, &c.

Filed November 20, 1902.

In the Supreme Court of the District of Columbia.

ELIZA O. SEIBERT, Complainant,	}	Equity. No. 23577.
vs.		
ROBERT L. PRESTON, Defendant.		

By consent of counsel for complainant and defendant this cause came on to be heard as on final hearing, upon the bill, the answer, and the papers and proceedings in this cause, and being argued by counsel for the respective parties, and it appearing to the court that

the complainant is entitled to a free and uninterrupted right of way forever, for purposes of ingress, egress and regress, over the rear ten (10) feet by the full width of the north twenty-eight (28) feet front of original lot numbered 14 in square numbered 158, and that the defendant has infringed on the rights of the complainant in obstructing the same by a gate or gates or fences across the same, it is hereby so adjudged; and upon consideration thereof it is this 20th day of November, A. D. 1902, by the court adjudged, ordered and decreed that said defendant, Robert L. Preston, and all and every person or persons claiming by, through, or under him, be, and he and they hereby are perpetually enjoined from erecting or putting across the said right of way any gate or gates, fences or other obstructions, and from maintaining any gate or gates, fences or other obstructions across said right of way.

32

By the court.

A. B. HAGNER,
Asso. Justice.

From this decree the defendant in open court prays an appeal which is granted, and bond fixed at one hundred dollars.
Nov. 20, '02.

A. B. HAGNER.

Memorandum.

November 21, 1902.—Appeal bond filed.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss :
District of Columbia, }

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 32, inclusive, to be a true and correct transcript of the record, as per rule 5 of the Court of Appeals of the District of Columbia, in cause No. 23577, equity, wherein Eliza O. Siebert is complainant, and Robert L. Preston is defendant, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 11th day of December, A. D. 1902.

Seal Supreme Court
of the District of
Columbia.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1263. Robert L. Preston, appellant, vs. Eliza O. Siebert. Court of Appeals, District of Columbia. Filed Dec. 11, 1902. Robert Willett, clerk.

